

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**NOTICE OF HEARING FOR OBJECTION OF EMPLOYEES RETIREMENT SYSTEM
OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO TO
PROOF OF CLAIM OF BENJAMIN ARROYO SOSA (CLAIM NO. 45727)**

PLEASE TAKE NOTICE that, on March 28, 2018, the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the Commonwealth’s representative pursuant to Section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² filed the *Objection of Employees Retirement System of the Government of the Commonwealth of Puerto Rico Proof of Claim of Benjamin Arroyo Sosa (Claim No. 45727)* (the “Objection”) with the United States District Court

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA” and together with the Commonwealth, COFINA, HTA, and ERS, the “Debtors”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

² PROMESA is codified at 48 U.S.C. §§ 2101-2241.

for the District of Puerto Rico (the “Court”), seeking to disallow in its entirety Proof of Claim No. 45727 filed by Benjamin Arroyo Sosa.

PLEASE TAKE FURTHER NOTICE that any response to the Objection must be filed in writing with the Court and must be served upon and received by the undersigned counsel for Commonwealth by **4:00 pm (Atlantic Time) on April 9, 2019.**

PLEASE TAKE FURTHER NOTICE that, in the event that one or more responses to the Objection are timely filed, the Objection shall be considered by The Honorable Laura Taylor Swain, at the United States District Court for the District of Puerto Rico, 150 Carlos Chardón Street, Federal Building, San Juan, Puerto Rico 00918-1767, at **9:30 a.m. on April 24, 2019.**

PLEASE TAKE FURTHER NOTICE THAT, IF NO RESPONSES TO THE OBJECTION ARE TIMELY FILED, SERVED, AND RECEIVED, IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE OBJECTION WITHOUT FURTHER NOTICE OR HEARING.

PLEASE TAKE FURTHER NOTICE that copies of all documents filed in these Title III Cases are available (a) free of charge by visiting <https://cases.primeclerk.com/puertorico> or by calling +1 (844) 822-9231, and (b) on the Court’s website at <http://www.prd.uscourts.gov>, subject to the procedures and fees set forth therein.

[Remainder of page intentionally left blank.]

Dated: March 28, 2019
San Juan, Puerto Rico

Respectfully submitted,

/s/ Hermann D. Bauer

Hermann D. Bauer

USDC No. 215205

Daniel J. Perez Refojos

USDC No. 303909

O'NEILL & BORGES LLC

250 Muñoz Rivera Ave., Suite 800

San Juan, PR 00918-1813

Tel: (787) 764-8181

Fax: (787) 753-8944

*Attorneys for the Financial Oversight and
Management Board as representative for the
Employees Retirement System of the
Government of the Commonwealth of Puerto
Rico*

/s/ Martin J. Bienenstock

Martin J. Bienenstock (*pro hac vice*)

Brian S. Rosen (*pro hac vice*)

PROSKAUER ROSE LLP

Eleven Times Square

New York, NY 10036

Tel: (212) 969-3000

Fax: (212) 969-2900

*Co-Attorneys for the Financial Oversight
and Management Board as representative
for the Employees Retirement System of the
Government of the Commonwealth of Puerto
Rico*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**OBJECTION OF THE EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO
TO PROOF OF CLAIM OF BENJAMIN ARROYO SOSA (CLAIM NO. 45727)**

To the Honorable United States District Court Judge Laura Taylor Swain:

The Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“Commonwealth”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the Commonwealth’s representative pursuant to Section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² files this objection (the “Objection”) to the claim (Proof of Claim No. 45727) of Benjamin Arroyo Sosa (“Claimant”), and in support of the Objection, respectfully represents as follows:

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA” and together with the Commonwealth, COFINA, HTA, and ERS, the “Debtors”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

² PROMESA is codified at 48 U.S.C. §§ 2101-2241.

JURISDICTION

1. The United States District Court for the District of Puerto Rico has subject matter jurisdiction over this matter pursuant to PROMESA section 306(a).
2. Venue is proper in this district pursuant to PROMESA section 307(a).

BACKGROUND

A. The ERS Title III Case and Bar Date Orders

1. On May 21, 2017, the Oversight Board, at the request of the Governor, issued a restructuring certification pursuant to PROMESA sections 104(j) and 206 and filed a voluntary petition for relief for ERS pursuant to PROMESA section 304(a), commencing a case under Title III thereof (the “ERS Title III Case,” and together with the Commonwealth Title III Case, the “Title III Cases”).

2. On January 16, 2018, the Debtors filed their *Motion for Order (A) Establishing Deadlines and Procedures for Filing Proofs of Claim and (B) Approving Form and Manner of Notice Thereof* [ECF No. 2255]³ (the “Bar Date Motion”). By the *Order (A) Establishing Deadlines and Procedures for Filing Proofs of Claims and (B) Approving Form and Manner of Notice Thereof* [ECF No. 2521] (the “Initial Bar Date Order”), the Court granted the relief requested in the Bar Date Motion and established deadlines and procedures for filing proofs of claim in the Title III Cases. Upon the informative motion of certain creditors, and the support of the Debtors, the Court subsequently entered the *Order (A) Extending Deadlines for Filing Proofs of Claim and (B) Approving Form and Manner of Notice Thereof* [ECF No. 3160] (together with the Initial Bar Date Order the “Bar Date Orders”) extending these deadlines to June 29, 2018 at 4:00 pm (Atlantic Time).

³ All ECF citations refer to documents filed in Bankruptcy Case No. 17 BK 3283-LTS.

B. ERS

3. ERS is a trust established by the Commonwealth in 1951 for the economic well-being of public employees. ERS is an agency of the government, separate and apart from the Commonwealth government and its other instrumentalities. *See* 3 L.P.R.A § 775. ERS holds in trust the funds for payment of pension and other benefits to officers and employees of the Commonwealth government, members and employees of the Legislature of the Commonwealth, and officers and employees of public corporations and municipalities. *See* 3 L.P.R.A § 761. There are over 260,000 current active employees and retirees who relied on the assets of ERS to provide retirement and other benefits.

C. ERS Claims and Proof of Claim at Issue

4. Pursuant to the Bar Date Orders, approximately 165,466 proofs of claim were timely filed against the Debtors and logged by Prime Clerk. Such proofs of claim total approximately \$43.5 trillion in asserted claims against the Debtors.

5. Of the proofs of claim filed, over 40,000 were timely filed in relation to ERS. In accordance with the terms of the applicable rules and the Bar Date Orders, many of these claims need not have been filed at all, or suffer from some other flaw, such as failing to comply with the applicable rules by failing to set forth a basis for asserting liability against ERS.

6. On or about June 27, 2018, the Claimant filed a claim against ERS, which was logged by Prime Clerk as Proof of Claim No. 45727 (the “Claim”).

OBJECTION TO PROOF OF CLAIM

7. Claims that are “unenforceable against the debtor and property of the debtor, under any agreement or applicable law” should be disallowed. 11 U.S.C. § 502(b)(1). While a properly executed and filed proof of claim constitutes prima facie evidence of the validity of the

claim, *see* Fed. R. Bankr. P. 3001(f), made applicable to this case by PROMESA section 310, the objecting party may overcome this prima facie evidence with evidence which, if believed, would refute at least one of the allegations essential to the claim. *In re Reilly*, 245 B.R. 768, 773 (B.A.P. 2d Cir.), *aff'd*, 242 F.3d 367 (2d Cir. 2000); *see also Factors Funding Co. v. Fili (In re Fili)*, 257 B.R. 370, 372 (1st Cir. B.A.P. 2001) (“[A] claim is presumed valid until an objecting party has introduced evidence sufficient to rebut the claimant’s prima facie case.” (citation omitted)). Federal Rule of Bankruptcy Procedure 3007(d) sets forth a number of grounds for objecting to claims, including objecting to a deficient claim under Federal Rule of Bankruptcy Procedure 3007(d)(6). Claims asserting excessively high liabilities without adequate supporting documentation may be disallowed. *In re Prevo*, 394 B.R. 847, 852 (Bankr. S.D. Tex. 2008).

8. In accordance with these legal principles, this Objection seeks to disallow the Claim as a deficient claim because it failed to comply with the applicable rules by not providing a basis for purporting to assert a claim against the Commonwealth. The Claim purports to assert liabilities owed to an individual creditor in the amount of \$9,999,999,999,999—nearly one-quarter of the total amount asserted against all five Title III Debtors, and many times the total amount of unfunded pension liabilities faced by the Commonwealth.

9. The sole basis for the liabilities asserted is “Taxes paid, Union employee, claim backed by a lien on particular property of the debtor and others.” The Claim does not provide any supporting documentation to support any of these factual assertions, let alone documentation which might provide a basis for liabilities many times in excess of the Commonwealth’s total reported unfunded pension liabilities. The Claimant does not identify any particular property of any of the Debtors on which he might have a lien, nor does he identify how such a lien was created. The Claimant likewise does not assert how his status as a Union employee or a taxpayer

might give rise to such liabilities. Indeed, the Commonwealth is aware of no employment agreement, collective bargaining agreement, statute, or other means by which it might have incurred liabilities in amounts totaling well over \$1 trillion to an individual union employee. Moreover, without any supporting documentation provided by the Claimant, the Commonwealth is unable to determine whether any portion of the Claim is validly asserted against it or against any other Debtors. In light of this total lack of evidentiary support, failure to disallow this Claim may result in Claimant potentially receiving an unwarranted, excessive recovery, to the detriment of other stakeholders in the ERS Title III Case.

RESERVATION OF RIGHTS

10. This Objection is limited to the grounds stated herein. Accordingly, it is without prejudice to the rights of the Commonwealth to object to the Claim or any other claim on any ground whatsoever. The Commonwealth expressly reserves all further substantive or procedural objections. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any claim against the Commonwealth; (b) a waiver of the Commonwealth's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (e) a waiver of the Commonwealth's rights under PROMESA, the Bankruptcy Code or any other applicable law.

NOTICE

11. The Commonwealth has provided notice of this Objection to (a) the individual creditor subject to this Objection, (b) the U.S. Trustee, and (c) the Master Service List (as defined by the *Order Further Amending Case Management Procedures* [ECF No. 3804]), which is available on the Debtors' case website at <https://cases.primeclerk.com/puertorico>. The

Commonwealth submits that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

12. No prior request for the relief sought in this Objection has been made to this or any other court.

[Remainder of page intentionally left blank.]

WHEREFORE the Commonwealth respectfully requests entry of an order, substantially in the form of the Proposed Order attached hereto as **Exhibit A**, (1) granting the relief requested herein, and (2) granting Commonwealth such other and further relief as is just.

Dated: March 28, 2019
San Juan, Puerto Rico

Respectfully submitted,

/s/ Hermann D. Bauer

Hermann D. Bauer

USDC No. 215205

Daniel J. Perez Refojos

USDC No. 303909

O'NEILL & BORGES LLC

250 Muñoz Rivera Ave., Suite 800

San Juan, PR 00918-1813

Tel: (787) 764-8181

Fax: (787) 753-8944

*Attorneys for the Financial Oversight and
Management Board as representative for the
Commonwealth of Puerto Rico*

/s/ Martin J. Bienenstock

Martin J. Bienenstock (*pro hac vice*)

Brian S. Rosen (*pro hac vice*)

PROSKAUER ROSE LLP

Eleven Times Square

New York, NY 10036

Tel: (212) 969-3000

Fax: (212) 969-2900

*Co-Attorneys for the Financial Oversight
and Management Board as representative
for the Commonwealth of Puerto Rico*

EXHIBIT A

Proposed Order

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**ORDER GRANTING OBJECTION OF THE EMPLOYEES RETIREMENT SYSTEM
OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO TO
PROOF OF CLAIM OF BENJAMIN ARROYO SOSA (CLAIM NO. 45727)**

Upon the *Objection of the Commonwealth of Puerto Rico to Proof of Claim of Benjamin Arroyo Sosa (Claim No. 45727)* (the “Objection”), dated March 28, 2018, of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (the “ERS”) for entry of an order disallowing in its entirety the claim of Benjamin Arroyo Sosa (Proof of Claim No. 45727) (the “Claim”), as more fully set forth in the Objection; and the Court having jurisdiction to consider the Objection and to grant the relief requested therein pursuant to Section 306(a) of PROMESA²; and venue being proper pursuant to Section 307(a) of PROMESA; and due and proper notice of the Objection having been provided to those parties identified therein, and no other or further notice being required; and the Court having determined that the relief

¹ The Debtors in these Title III Cases, along with each Debtor’s respective title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA” and together with the Commonwealth, COFINA, HTA, and ERS, the “Debtors”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

² Capitalized terms used but not defined herein shall have the meanings set forth in the Objection.

sought in the Objection is in the best interest of the Commonwealth, its creditors, and all the parties in interest; and the Court having determined that the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Objection is GRANTED as set forth herein; and it is further

ORDERED that the Claim is hereby disallowed in its entirety; and it is further

ORDERED that Prime Clerk is authorized and directed to delete the Claim from the official claims register in the ERS Title III Case; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____

Honorable Judge Laura Taylor Swain
United States District Judge